No. 14-915

IN THE
Supreme Court of the United States

REBECCA FRIEDRICHS, *et al.*,

Petitioners,

v.

CALIFORNIA TEACHERS ASSOCIATION, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF ON BEHALF OF ELLIOTT DUCHON, SUPERINTENDENT, JURUPA UNIFIED SCHOOL DISTRICT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

POSITION OF ELLIOTT DUCHON..... 2

CONCLUSION 5

APPENDIX 1: Collective Bargaining Agreement between the Jurupa Unified School District and National Education Association- Jurupa, dated July 1, 2014 through June 30, 2017, Articles I, II and IV 1a

APPENDIX 2: Signed Proposed Order Granting Stipulation Regarding the Participation of Defendant Elliott Duchon..... 11a

APPENDIX 3: Stipulation Regarding the Participation of Defendant Elliott Duchon 15a

TABLE OF AUTHORITIES

Page(s)

CASES

Abood v. Detroit Board of Education,
431 U.S. 209 (1977) 1

Harris v. Quinn,
134 S. Ct. 2618 (2014) 1

Knox v. Service Employees International Union,
132 S. Ct. 2277 (2012) 1

STATUTES

CAL. GOV'T CODE § 3543 ..... 2, 4, 5

CAL. GOV'T CODE § 3546 ..... 2, 3

CAL. GOV'T CODE § 3546.3 3

STATEMENT OF THE CASE

In *Abood v. Detroit Board of Education*, 431 U.S. 209, 232 (1977), the Court declared that "agency shop" arrangements are lawful, so long as service fees collected by unions are used for collective-bargaining, contract administration, and grievance-adjustment purposes. The Court further held that the First Amendment precludes school district employers and unions from compelling an employee to contribute to an ideological cause he may oppose as a condition to holding a position as a public school teacher. *Id.* at 235. Based on two recent decisions, *Knox v. Service Employees International Union, Local 1000*, 132 S. Ct. 2277 (2012) and *Harris v. Quinn*, 134 S. Ct. 2618 (2014), Petitioners challenge the *Abood* decision and request that the Court grant certiorari to this case. The California Teachers Association ("CTA"), the National Education Association ("NEA"), and the individual local affiliates oppose this request.

As the Superintendent of Jurupa Unified School District ("District"), Respondent Elliott Duchon's interests in this matter are limited. Respondent Duchon acknowledges the potential anomaly created by the Court's *dicta* in *Knox* and *Harris*. However, there is no clear judicial precedent on which Respondent Duchon could rely to refuse to implement the agency fee provision of the current collective bargaining agreement between the District and the NEA-Jurupa. Consequently, the District complies with the mandates of the Education Employment Relations Act ("EERA"),

which governs its employment relationship with its employees and establishes an "agency shop" arrangement, and will continue to do so unless the law is found to be unconstitutional or the law is amended through the California legislative process.

POSITION OF ELLIOTT DUCHON

The EERA governs employer-employee relationships in the California public school system. Employees are afforded the right to "form, join, and participate in the activities of employee organizations of their choosing for the purpose of representation on all matters of employer-employee relations." CAL. GOV'T CODE § 3543(a). The EERA establishes procedures for public school employees to identify an exclusive representative to meet and negotiate with their public school employer. CAL. GOV'T CODE §§ 3544-3544.9.

Once an exclusive representative is established, the public school employer is required to "deduct the fair share service fee" from each unit member's salary and pay the amount to the exclusive representative. CAL. GOV'T CODE § 3546(a). Each unit member must either join the established organization or pay the fair share service fee. *Id.* The "fair share service fee" is designed to "cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative." *Id.*

Individual employees who, for religious reasons, object to "joining or financially supporting employee organizations" are exempt from contributing a fair share service fee to the established organization. CAL. GOV'T CODE § 3546.3. However, these employees must pay an amount equal to the fair share service fee to a non-religious, non-labor, charitable organization. *Id.* The employer or organization may require proof of such payments on an annual basis. *Id.*

As a public school employer, the EERA governs the District's labor relations with its employees. Certain District employees identified the NEA-Jurupa as their exclusive representative. Appendix 1, Article I. The District and the NEA-Jurupa negotiated a collective bargaining agreement to govern their employer-employee relationship. Pursuant to the EERA and the collective bargaining agreement, the District deducts union dues and/or fair share service fees from unit member salary warrants. Appendix 1, Article IV The collective bargaining agreement affords unit members the opportunity to "opt out" from joining or financially supporting NEA-J for religious reasons. Such unit members are required to pay a sum equal to the fair share service fee to a non-religious, non-labor, charitable organization. Appendix 1, Article IV, Section 12.

Pursuant to California Government Code section 3546, subsection (e), the collective bargaining agreement, also contains a hold harmless clause whereby NEA-J must indemnify and hold the

District harmless against any liability resulting from the deduction of union dues, the fair share service fees, or the charitable donation on behalf of the unit member. Appendix 1, Article IV, Section 15. The above-described provisions of the District's collective bargaining agreement comply with the EERA. The District will continue to comply with the current mandates of the EERA, unless such mandates are found to be unconstitutional by the Court or the law is amended through the California legislative process.

Due to his limited interest in this matter, on June 20, 2013, Respondent Duchon and Petitioners filed a "Stipulation Regarding the Participation of Defendant Elliott Duchon" with the Central District of California, Southern Division, whereby Respondent Duchon agreed not to: (1) file a responsive pleading to the Complaint for Declaratory and Injunctive Relief filed by Petitioners; and, (2) oppose Petitioner's claims. Appendix 3. The Honorable Josephine Staton Tucker, United States District Judge, signed the proposed order granting the stipulation on June 24, 2013. Appendix 2. Consequently, Respondent Duchon did not file a responsive pleading in the Central District of California, took no part in the proceeding before the Ninth Circuit, and files this limited response pursuant to the Court's request.

The Respondent Duchon, and the school district he serves, respects the right of employees to "form, join, and participate in the activities of employee organizations of their choosing for the

purpose of representation on all matters of employer-employee relations." CAL. GOV'T CODE § 3543(a). Similarly, Respondent Duchon and the District respect the First Amendment rights of employees. Respondent Duchon and the District will continue to abide by the mandates of the EERA until such time that the Court finds that the law is unconstitutional or the California Legislature amends the requirements and procedures contained therein.

CONCLUSION

Pursuant to the signed Proposed Order Granting Stipulation Regarding the Participation of Defendant Elliott Duchon, Respondent Duchon does not oppose Petitioner's claims and makes no specific requests of this Court.

DATED: May 26, 2015

Respectfully submitted,

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APPENDIX 1

Jurupa Unified School District
And
National Education Association- Jurupa

Collective Bargaining
Agreement

[GRAPHICS OMITTED]

July 1, 2014
June 30, 2017

ARTICLE I

RECOGNITION

Section 1 - Association. The Jurupa Unified School District (hereinafter referred to as the "District") confirms its recognition of the National Education Association - Jurupa, affiliated with the California Teachers Association and the National Education Association (hereinafter referred to as the "Association") as the exclusive representative for that unit of employees listed below:

Adult Education Teacher
Behavior Specialist
Classroom Teacher
Counselor
Guidance Coordinator
Speech & Language Pathologist
Librarian
Mental Health Counselor
Nurse
Program Specialist
Psychologist
Special Education Teacher
Teacher on Special Assignment
Temporary Teacher

Section 2 - Board of Education. The Association recognizes the Board of Education as duly elected trustees of the Jurupa Unified School District and agrees to negotiate exclusively with the representatives selected by the Board of Education.

Section 3 - Individual Contracts. Any individual contract between the Board of Education and unit member heretofore executed shall be subject to and consistent with the terms and conditions of this Agreement.

Section 4 - Supremacy of Agreement. This Agreement shall supersede any rules, regulations or practices of the Board of Education which are or may in the future be contrary to or inconsistent with its terms.

Section 5 - Due Process. The provisions of this Agreement shall be interpreted and applied in a manner which is consistent with the concept of due process.

Section 6 - Maintenance of Certain Benefits. Benefits provided to unit members in written Board policies and regulations which were in effect on July 1, 1976 which fall within the scope of the collective bargaining law will continue for the duration of the Agreement.

Section 7 - Notice. Whenever provision is made in this Agreement for the giving, serving or delivering of any notice, statement, or other instrument, the same shall be deemed to have been duly given, served, or delivered, either upon personally delivering or by mailing the same by United States registered or certified mail (return receipt requested) to the Party entitled thereto at the address as set forth below:

DISTRICT: DEPUTY SUPERINTENDENT-
PERSONNEL SERVICES
Jurupa Unified School District
4850 Pedley Road
Jurupa Valley, CA 92509

ASSOCIATION: PRESIDENT
National Education Association
- Jurupa
4651 Brookhollow Circle, Suite
A
Jurupa Valley, CA 92509

Either Party may change the address to which notice shall be given by notice sent in accordance with the provisions of this Article.

ARTICLE II

DURATION

Section 1 - Duration. This Agreement shall be effective July 1, 2014 until June 30, 2017 unless another effective date is specified elsewhere in the Agreement. Other effective dates include summer school (Schedule IV) and the basic hourly rate (Schedule IV) which will be effective for work performed from the date NEA-J ratifies the Agreement.

Section 2 - Reopeners.

A. Reopeners for the 2015-2016 and 2016-2017 school years shall include Article XIV-Basic Compensation and Article XVII-Health and Welfare and and up to two additional articles selected by each party.

B. Additionally, the Parties agree to negotiate the impact of new legislation including legislation by ballot initiative, and/or judicial decision insofar as the impact is within the scope of bargaining.

ARTICLE IV

ASSOCIATION RIGHTS

Section 1 Use of Facilities. The Association and its members shall have the right to make use of school equipment, buildings, and facilities at reasonable hours by application under the appropriate District policy. The Association shall have the right to post notices of activities and matters of Association concern on Association bulletin boards. At least one (1) bulletin board of reasonable size shall be provided in each school in areas frequented by unit members. The Association may use the District interschool mail service, as well as e-mail and other electronic communications and employee mail-boxes for communications to unit members.

Section 2 - Association Business on School Property. Authorized representatives of the Association shall be permitted to transact official Association business on school property before and after instructional hours and during lunch periods as long as there is no interference with the normal operation of school.

Section 3 - Association Leave. The Association shall be entitled to use Association Leave as authorized under the Article "Absences and Leaves."

Section 4 - Association Day. Each Wednesday is designated as "Association Day" except when a parent-conference day is on Wednesday. Thursday shall become "Association Day" for that week. No unit member shall be required to be on duty beyond the regular hours of duty on "Association Day" Unit members whose hours extend beyond 3:15 p.m. shall be excused from non-teaching duties at 3:15 p.m. to attend scheduled "Association Day" meetings, if they choose to do so.

Section 5 Non-Interference. The District or its representatives shall not interfere with lawful Association activities, plans or decisions.

Section 6 - Membership/Service Fees. Each unit member shall, within thirty (30) days of the effective date of this Agreement or within thirty (30) days of the commencement of assigned duties, either be a member of the Association or pay a service fee to the Association, except as provided for in Section 12, "Religious Objectors." This fee shall equal regular membership dues and assessments, adjusted as required by law.

Section 7 - Maintenance of Membership. Each unit member who, after the effective date of this Agreement, is a member of the Association and each unit member who becomes a member after that date shall maintain his/her membership in the Association through the term of the Agreement. The District agrees not to honor any requests by unit members for cancellation of dues deduction from salary received during this period.

Section 8 Payment. A unit member may pay such fees or dues directly to the Association or may authorize payment by payroll deduction as provided below in Section 10 of this Article.

Section 9 - Deductions. Any unit member who is a member of the Association or who has applied for membership may sign and deliver to the District a written statement authorizing deduction of unified membership dues in the Association. Such authorization shall continue in effect from year to year unless revoked in writing. Pursuant to such authorization, the District shall deduct one-tenth (1/10) of such dues from the regular salary warrant of

the unit member each month for ten (10) months. Deductions for unit members who sign such authorization after the commencement of the school year shall be appropriately prorated to complete payments by the end of the school year. Upon appropriate written authorization from the unit member, the District shall deduct from the salary of any unit member and make appropriate remittance for annuities, credit union, savings bonds, charitable donations or any other plans or programs jointly approved by the Association and District.

Section 10 - Automatic Deduction/Transmittal. In the event that a member does not pay the above referenced dues or fees directly to the Association or authorize payment through payroll deduction, the District will, on written notification and presentation of adequate documentation by the Association, deduct the membership dues or service fees and appropriate amounts to cover dues and/or fees in arrears as provided in Education Code Section 45061. All dues and/or service fees deducted by the District pursuant to authorization by unit members will be delivered to the Association. An alphabetical list of unit members from whom such deductions have been made which indicates any changes in personnel from the previous list will also be provided.

Section 11 - Religious Objectors. Any unit member who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support the Association as a condition of employment. Such unit member shall be required, in lieu of a service fee, to pay sums equal to such service

fee to one of the following non-religious, non-labor organizations, charitable funds exempt from taxation under Section 501(c) (3) of Title 26 of the Internal Revenue Code:

a. Foundation to Assist California Teachers
b. NEA-Jurupa Christa McAuliffe Memorial Scholarship Fund
c. Rubidoux Lions Club Sight Fund

Proof of such payment(s), along with verifiable evidence of membership in a religious body whose traditional tenets or teachings object to joining or financially supporting employee organizations, shall be made on an annual basis to the District and Association as a condition of continued exemption from the provisions of Section 7. Proof of payment shall be in the form of an authorized payroll deduction, or in the form of receipts and/or canceled checks indicating the amount paid, date of payment, and to whom payment in lieu of service fee has been made. Such proof shall be made within thirty (30) days of ratification of this Agreement and within thirty (30) days of the beginning of the unit member's work year thereafter.

Section 12 - Information. The Association shall furnish any information needed by the District to fulfill the provisions of this Article.

Section 13 - Association Grievance. The Association has the right to act as a grievant as specified in the Grievance Procedure Article of this Agreement.

Section 14 - Hold Harmless Clause. The Association shall indemnify, defend and hold harmless the District, the District's Board of Education, including each individual School Board member, the employees acting within the scope of their employment, agents and

representatives of the District against any and all claims, demands, suits or other forms of liability, including but not limited to, wages, damages, judgments, fees, fines, court costs, attorney fees, and any back pay, penalties or awards resulting from any court, arbitrator or PERB order, judgment or settlement which may arise by reason of, or resulting from the operation of this Article. The Association shall bear all costs of defending against any and all such claims, demands, suits, or other forms of liability, including, but not limited to, court costs, attorney fees and all other costs of litigation. Upon commencement of such legal action, the Association shall have the exclusive right to decide and determine whether any claim, liability, suit or judgment made or brought against the District or Association because of such action shall or shall not be compromised, resisted, defended, tried, or appealed. The Association's decision thereon shall be final and binding upon all parties protected by this Section. This paragraph shall not be construed as a waiver on the part of the District, Board of Education or any individual protected by this Section of any claim against the Association for failing to act in good faith in settling a claim or any failure to competently defend and hold them harmless, or in cases where the Association seeks redress for the District's alleged failure to comply with the operation of this Article.

Within ten (10) days of proper service of a claim, demand, suit, or other legal action against any protected party, the District shall inform the Association and provide the Association with copies of any documents received as a result of the legal action. Upon request, the District shall provide the

Association's legal counsel with documents and information reasonably related to providing a defense.

Section 15 - Meet and Confer. The District and the Association agree to meet monthly to discuss items of mutual concern. Such discussions shall not supplant negotiations between the Parties on items within the scope of bargaining.

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ATTORNEY FOR DEFENDANT ELLIOTT DUCHON

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

REBECCA FRIEDRICHS, et al.,	CASE NO. 8:13-cv-676-JST-CW
Plaintiff(s),	**PROPOSED ORDER GRANTING STIPULATION REGARDING THE PARTICIPATION OF DEFENDANT ELLIOTT DUCHON**
v.	
CALIFORNIA TEACHERS ASSOCIATION, et al.,	
Defendant(s).	

ORDER

The joint stipulation of Plaintiffs Christian Educators Association International ("CEAI"), Jelena Figueroa, George W. White, Jr., Scott Wilford, Kevin Roughton, Peggy Searcy, Jose Manso, Harlan Elrich, Rebecca Friedrichs, Karen Chavez-Cuen, and Irene Zavala (collectively, "Plaintiffs"), and Defendant Elliott Duchon (hereinafter referred to as the "Stipulating Defendant"), was filed with this Court on June 20, 2013.

The Court, having read and considered the joint stipulation, and finding that good cause exists, HEREBY ORDERS THAT:

1. Stipulating Defendant will not: (i) file a responsive pleading to the Complaint for Declaratory and Injunctive Relief; and (ii) oppose Plaintiff's claims in this action. Should Plaintiffs determine at a future time that it is necessary for Stipulating Defendant to file a responsive pleading, Plaintiffs shall give written notice to counsel for Stipulating Defendant, and Stipulating Defendant shall have 21 days from the date of receipt of such notice to file a responsive pleading; otherwise, Plaintiffs shall not request or cause entry of default of Stipulating Defendant.

2. Unless Plaintiffs determine at a future time that it is necessary for Stipulating Defendant to file a responsive pleading, Stipulating Defendant will not appear at court proceedings in this case or oppose Plaintiff's claims in this action.

3. Stipulating Defendant shall be bound by the final judicial resolution of this case. Should Plaintiffs alter the scope of relief sought by the Complaint for Declaratory and Injunctive Relief, Stipulating Defendant reserves the right to file a responsive pleading to the Complaint for Declaratory and Injunctive Relief and/or newly filed pleading upon notice of 21 days to Plaintiffs.

4. Plaintiffs shall include counsel for Stipulating Defendant, identified in the signature block below, in Plaintiffs' service list for all pleadings and notices in this case.

5. So long as Stipulating Defendant has not: (i) filed a responsive pleading; and (ii) opposed Plaintiffs' claims, Plaintiffs shall not seek attorneys' fees or costs against Stipulating Defendant.

Dated: June 24, 2013

JOSEPHINE STATON TUCKER

Hon. Josephine Staton Tucker

United States District Judge

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ATTORNEY FOR DEFENDANT ELLIOTT DUCHON

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

REBECCA FRIEDRICHS, et al., Plaintiff(s), v. CALIFORNIA TEACHERS ASSOCIATION, et al., Defendant(s).	CASE NO. 8:13-cv-676-JST-CW **STIPULATION REGARDING THE PARTICIPATION OF DEFENDANT ELLIOTT DUCHON**

Plaintiffs Christian Educators Association International ("CEAI"), Jelena Figueroa, George W. White, Jr., Scott Wilford, Kevin Roughton, Peggy Searcy, Jose Manso, Harlan Elrich, Rebecca Friedrichs, Karen Chavez-Cuen, and Irene Zavala (collectively, "Plaintiffs"), and Defendant Elliott Duchon (hereinafter referred to as the "Stipulating Defendant"), by and through their undersigned counsel, hereby stipulate as follows:

1. Stipulating Defendant will not: (i) file a responsive pleading to the Complaint for Declaratory and Injunctive Relief; and (ii) oppose Plaintiff's claims in this action. Should Plaintiffs determine at a future time that it is necessary for Stipulating Defendant to file a responsive pleading, Plaintiffs shall give written notice to counsel for Stipulating Defendant, and Stipulating Defendant shall have 21 days from the date of receipt of such notice to file a responsive pleading; otherwise, Plaintiffs shall not request or cause entry of default of Stipulating Defendant.

2. Unless Plaintiffs determine at a future time that it is necessary for Stipulating Defendant to file a responsive pleading, Stipulating Defendant will not appear at court proceedings in this case or oppose Plaintiff's claims in this action.

3. Stipulating Defendant shall be bound by the final judicial resolution of this case. Should Plaintiffs alter the scope of relief sought by the Complaint for Declaratory and Injunctive Relief, Stipulating Defendant reserves the right to file a responsive pleading to the Complaint for Declaratory and Injunctive Relief and/or newly filed pleading upon notice of 21 days to Plaintiffs.

4. Plaintiffs shall include counsel for Stipulating Defendant, identified in the signature block below, in Plaintiffs' service list for all pleadings and notices in this case.

5. So long as Stipulating Defendant has not: (i) filed a responsive pleading; and (ii) opposed

Plaintiffs' claims, Plaintiffs shall not seek attorneys' fees or costs against Stipulating Defendant.

SO STIPULATED.

Dated: June 20, 2013 JONES DAY

By: */s/ John A. Vogt*
John A. Vogt
ATTORNEYS FOR PLAINTIFFS

Dated: June 20, 2013

By: */s/ Kerrie E. Taylor*

Kerrie E. Taylor

ATTORNEYS FOR DEFENDANT ELLIOTT DUCHON